UNITED STATES OF AMERICA

IN THE

Supreme Court of the United States

No. 291

FREEDMAN BROTHERS & CO., Et Al.,

Petitioners,

vs.

ORLAND ELLIS, Trustee of The Detroit Central Wholesale Grocery Company, a Michigan Corporation, Bankrupt,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ARGUMENT

At the first meeting of creditors of the bankrupt, Detroit Central Wholesale Grocery Co., held March 1, 1950, the creditors' vote for trustee, allowing all claims to vote, resulted in a stalemate (3, 5, 8).

Petitioners, in effect, asked for time to introduce proof (9) on their unverified objections (4, 12, 13, 31) to the largest single claim (hereinafter called the Phil claim) (2, 6) which was verified (4). This offer was denied on the ground of interminable delay in hearing objections on the merits (9) and would not be in the best interests of the estate or the creditors (6, 9, 17).

The contending factions could reach no agreement (8) and the referee thereupon appointed Orland H. Ellis Trustee, a disinterested person (9).

The action was affirmed by the District Court on review (37) and by the Court of Appeals for the 6th Circuit (55, 56).

The primary purpose of a first meeting is to elect a trustee. In re McGill, 106 Fed. 57 (C.A. 6).

Rule 176, Bankruptcy Rules, Eastern District of Michigan:

> ". . . Objections to the allowance of a claim . . . if raising an issue of fact shall be under oath . . ."

Under the circumstances, the Phil claim was valid prima facie and entitled to vote. *Whitney* v. *Dresser,* 200 U.S. 532.

United States Code, Title 11, Chapter 5, Sec. 72.

Section 44. a: "If the creditors do not appoint a trustee . . . the court shall make the appointment." (see also in *re Knox,* 221 Fed. 36 (C.A. 6).

In view of the facts, herein, to appoint a disinterested person trustee who has, since his appointment proceeded with the diligent administration of the estate, is not "a plain and injurious error of law or abuse of discretion". In *re Rosenfeld - Goldman Co.,* 228 Fed., 921, 923.

To remove the trustee would cause needless expense to the estate. It is submitted that the issues herein present a factual question and that no abuse of discretion is shown.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

ORLAND ELLIS, Respondent,
In pro per.